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## SOVEREIGNTY AND MORAL OBLIGATION.

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THEORIES in politics are originally the defences men make for their conduct toward other men. One can saw wood without a theory of sawmanship; one can deal with his friends without a theory of friendship; but one can hardly conduct an elaborate business operation without what is called a "policy." The increase of what we call mere physical quantities in any practical undertaking will eventually conscript thought, general principles, for its mastery and for expounding it to both co-operators and critics. It is partly for this reason that while politics is the most practical branch of philosophy, it is also the most philosophical branch of practice, the branch in which men have been most governed—sometimes ridden—by their theories. And for the same reason, this will always be the case.

The theory of sovereignty has done more than its share of practical damage; but the fault has rarely been that of the thinker. For if the sovereign is the most logical entity that political theory has created, it is unquestionably the most illogically used,—by the politicians. It was Bismarck, presumably a practical statesman, who fought and lost his *Kulturkampf* in pursuit of an ideal of state sovereignty, which certainly he himself did little to create. And critics of sovereignty at the present moment are prone to take such extracts of historical experience as this Bismarckian episode as pertinent comment on the fallacy of the conception.<sup>1</sup> What such an episode might show—as nearly as history can show anything—would be that Bismarck's conception did not work in Bismarck's hands; and quite possibly (among other inviting hypotheses) because it did not correspond to fact. This procedure is

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<sup>1</sup> See, for example, the notable series of essays in Harold J. Laski's *The Problem of Sovereignty*, 1917.

instructive; but it promises fewer positive results than to ask *what it is in human relations that has given this concept a foothold*. For the notion of sovereignty was not drawn gratuitously from the clouds; it was designed to clarify some fact found at work within political experience.

In the present paper, I propose to follow this second and more empirical method; but it may tend to clear the air, and to bring about theoretical co-operation (nowhere so needful as in political theory), if we begin by excluding certain historical conceptions of sovereignty as neither actual nor expressive of any working ideal.

# I.

First, the sovereign foreshadowed rather than defined in Aristotle's political theory, the subject which, prior to the human individual, pursues the *all-inclusive end*, neatly embracing and superseding the purposes of all personal and family and village life,—this sovereign does not exist in human society. Already in Aristotle's time the simple hierarchy of existing purposes in the ideally self-sufficient community had been visibly ruptured by widespread commercial, and incipient religious, groupings.

Second, the sovereign of Hobbes, whose prior will creates the conditions under which alone morality is possible, does not exist. The conditions under which moral obligation exists are not made by any human institution. If I refrain on moral grounds from breaking the furniture of a person whose taste in furniture I disapprove, it is not primarily because I have set over myself a power which renders it imprudent to act in this way; it is rather because he and I alike prefer to live in a world where freedom of choice in certain matters is respected, and because he and I are capable of recognizing in one another *that* preference, though not the choice of furniture, as a common good and a common bond. It requires no institution to create this situation, and the obligation that goes with it; and further, no institution could create it,—though it might easily precipitate itself in the shape of an institution.

Third, the sovereign commonly though erroneously, attributed to Hegel, the quasi-absolute, subject or spirit in whom all individuals together with their rights are mere momenta, does not exist in human society. Indeed, this sovereign, as a sort of synthesis of the sovereigns of Hobbes and Aristotle, may be said to be doubly non-existent. But the particular feature of his non-existence which I should like to emphasize is his individual personality. And this point is so vital to the whole matter that I ask leave to give it more than a passing comment.

## II.

First, as to its implications: It might reasonably be supposed that only a person could be a subject of moral obligation; and that, accordingly, if one judges that states are fictitious, rather than real persons, he thereby resigns the notion that states can have any but fictitious moral duties. Only a being with a soul can sin or repent of sin; and while we hardly expect states to be moved by the fear of future punishment, inasmuch as it is the avowed intention of states to live on earth forever, we might well wish them to be accessible to the more immediate sentiments of interpersonal regard and interest in the general human future. But these are, to our observation, the sentiments (now and then) of statesmen, not of states; and the difficulty which the statesman has in making his own individual conscience the guide of his political action is chiefly the difficulty of knowing what precisely the character of that being may be in whose name he acts. A doubt of real identity between the being which under one administration makes promises, signs treaties, incurs debts, etc., and the being which under another administration has to fulfil these undertakings, can hardly fail to perplex the problem of obligation.

In the case of the individual, there is always an empirical difference between the person who promises and the person who has to fulfil, a difference which may or may not be relevant to the subject matter of the promise; but his interest in being, and being taken for, a morally responsible

entity is enough to override in most cases such differences. In the case of the state there are similar obvious motives for a wish, on the part of the statesmen, that the state be considered responsible; and this major expediency may likewise override not alone the fact of change of administration with whatever psychological discontinuity that may imply, or even of revolution, but also a strong feeling that the original promise was iniquitous, or that history has so far altered the circumstances as to reverse the original meaning of the engagement. But if the state is a fictitious or pragmatic entity to be treated *as if* responsible, for certain abstract purposes, it would seem the duty of the statesman to recognize that the limit of those abstract purposes is also the limit of possible obligation. He would have to subordinate his conscience to his deductive faculty, not because his conscience is in error, but because it fails to apply. The state can do no wrong; not because the will of the state defines what is right, but because there is here no moral subject.

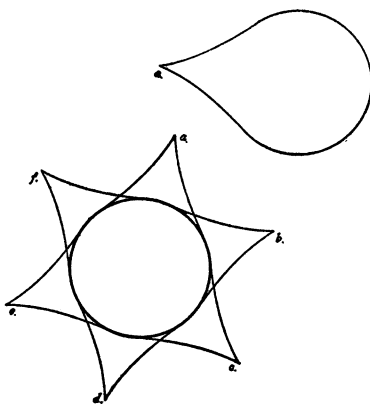
If, in spite of these considerations, critics attack the idea of the real, over-individual, personality of the state on the ground that politics must come within the domain of moral judgment, one would be inclined at first to say that the force of the argument—if it has any force—is in the opposite direction. The postulate of responsibility would apparently lead us to regard the state as a real subject in the sense, at least of Gierke's *Genossenschaft* or of Royce's Community.

But however powerful our conviction that states must have duties, I doubt whether an argument regarding the nature of the state can be built on that postulate. If a view of the state can be built of objective material, by the aid of psychological conceptions empirically valid, I should judge that nearly all would prefer it. And it seems to me that such a view is attainable.

### III.

Suppose we think of an instinct as a course of behavior inseparable from a group of environing objects with which

that behavior deals,—as the food-getting activities are inseparable from the food-objects and their habitat. The food-getting creature tends to regard this entire group of objects as *his own* in only a somewhat more attenuated sense than that in which he regards his tools or weapons as his own, because they form part of one of his *vital circuits*. Similarly the “self” of an author extends itself over the materials of his writing and the characters of his book; they are part of his life in the very literal sense that if he is deprived of them his functions are interrupted, much as they are interrupted if you deprive him of an eye or a finger. Through their relations to him these objects may be said, in more than a purely fictitious sense, to be alive, and to acquire at times a sort of personality.



Individual vital circuit and coincident vital circuits, showing tendency to quasi-individuality of the circuit.

But a vital circuit of this sort need not necessarily be exclusive to one individual and his wish. A group with the same hunting ground, a gang of workmen on the same job, stockholders in the same business, have vital circuits partly coincident. In such cases the common portion tends to assume an autonomy of its own; and the life of such a quasi-individual entity, I repeat, is not a pure fiction: if you cut this circuit, it bleeds.

If two individuals have the same need, they need not on

that account have any vital circuit in common. But if in a school of nine boys there is a unanimous wish to form a baseball nine; and if there is in the aggregation one bat, one ball, one mask, one mit, etc., the prophetic eye may see nine vital circuits falling into a coincidence shaped by fate, each of which includes beside the common material property the persons of the other eight. In similar fashion, a wholly universal need may bring men together in apparently fortuitous groupings determined by the accidental presence of a *set of objects* available and necessary for a common vital circuit. In this way the theory of "vital circuits" will differ from that of "social groups" in general.

And it is in this way, I believe, that we may conceive the universal need for an ordered and reliable social existence calling into being—no universal state—but those curiously irregular and curiously tenacious entities called national states. Let it be granted that among the deeper needs of human nature, call them instinctive or not, are the needs for self-knowledge, for cumulative experience and experimentation, for making long plans, for a calculable to-morrow and a calculable permanence, for a set of traditions to cherish and test in application, and for that kind of power which consists in the possibility, by persuading one's neighbors, of putting one's ideas into lasting effect. And let it be granted that the *material conditions* for satisfying these needs are peculiar, not to be made or unmade by any social contract entered into by any group you please of men-in-general or by the group of all-men. If, then, a vital circuit satisfying this composite "political" need is once formed, it will tend to persist; it will include present, past, and future members, and not the present only; its identity will not essentially alter with the shifting of personnel; it will have a real and verifiable life, a character, a reputation; and it will have problems of relations to other such circuits determined by its own character. But the veritable consciences concerned in these transactions will always be the consciences of the individuals whose vital circuit the state is. These consciences will be able to act

under the postulate of identity because the needs concerned and their data, the vital circuits, coincide.

#### IV.

We may now put the question, In such an entity, what are the facts which would evoke, and so give meaning to, such a notion as that of sovereignty?

First, *finality of decision*. If men are to act together at all, there must be some way, formal or informal, of arriving at a decision; there is a definite office, whether or not a definite officer, determining what shall be done, and how it shall be done. This circumstance has nothing to say about how much consultation with everybody shall have preceded the decision; nor how much the decider will defer to the judgment of the more important, more thoughtful, more powerful or authoritative members or interests—it being taken as an axiom that such differences of power will always exist. He who leads must always to this extent follow; but this does not destroy the office of leadership. The function itself is as inevitable, and hence as unanimously willed, as the existence of the common undertaking; it occupies the same place in the physiology of the vital circuit as the function of decision after deliberation in the individual mind,—a simple corollary of the will to exist as an identifiable subject. It is the existence of a supreme court, a chief executive, an authoritative foreign office, which marks the “sovereign” state; and the function retains its meaning no matter what interest, at any time, may be the most powerful within the community.

Second, *the psychological priority of the political interest*. If the will to act together politically were as easily abandonable as the will to take a summer trip together, leadership in the state would have the same limited finality as leadership in any other social enterprise. A genuine “general will” to take such a trip might conceivably be reduced to zero in the course of a discussion of ways and means which failed to develop any acceptable concrete plan, and hence any leader. If the political enterprise were of this nature,



the state would be in precarious competition for our loyalty with the interests represented by recreation, industry, religion, professional fraternity, etc. It is some such picture of the position of the state that the guild socialists of England and their followers in this country are framing. Every wave has its own crest, but there is no crest of the ocean: the political interest, as one interest among many, must take its chances with the rest.

But while the old concentric picture of social structure has become visibly obsolete with the dominance of world-wide "liberty of association," it remains true that the state is on a different psychological plane than other groups; and the crux of the contemporary problem of sovereignty lies in defining this difference.

The state does not *include* the end of religion, commerce, industry. It is not quite the case that it *provides the conditions* which make them possible. But if we regard all shifting social groupings, and all variation of power between groups, as experimental,—not shifting for its own sake, but shifting for the sake of finding a right adjustment,—this *interest in the meaning of the process* would presuppose a mind surveying the whole story, formulating and preserving its results, making the competing ingredients gradually self-conscious and skilful in the guidance of their own efforts. One type of experiment would be more inevitable than any effort at summer trips, or trades unions, or chambers of commerce, namely the experiment of adjusting all these special experiments to one another. This supervisory mind, of long memory, with its adjusting or law-making functions, is the state; and the interest in wholeness and proportion which it expresses is psychologically inevitable, whatever the careers of the interests reflected upon, and whether or not the vital circuits of those interests lie wholly within its own borders.

After all it is the *man* who is distributed abroad among his various competing vital circuits, and his unique interest in the state is among other things his unique interest in not being torn asunder by their conflict. It is his interest in

being *himself* that makes the will of the state imperative upon him, as no interests therein reflected upon are imperative. In this sense also, the state is sovereign.

## V.

The political sovereign is now defined as the will which finally decides that a particular experiment shall exist (together with all deeds involved in carrying it out),—an indispensable experiment in co-ordinating all other social experiments. It is an identical, and irrevocable, element in the will of every member of the state, treated as a single and independent person.

We have not said, however, that there is nothing left over in the individual citizen's will beside this particular experiment, and what it surveys. For any one who makes a decision has something left over; at least, the knowledge that other experiments were possible, and in our case, the knowledge that other experiments exist.

His relation to these other experiments would be a moral relation, in precisely the sense defined in section I, above. The mutual respect for freedom of choice in experiment-making would be the common good that creates the common bond and the mutual obligation. And so far, the moral relations of sovereign states would be precisely analogous to those of sovereign persons. We do not, as a fact, wholly respect the freedom of choice of children and other wards; we wholly respect that freedom only in mature persons. And so the world naturally divides itself into sovereign and part-sovereign states *on the basis of maturity*. States are recognized as sovereign precisely because they are morally responsible,—the very reverse of supposing them sovereign because they are above moral obligation.

## VI.

But there is still a third empirical element in our conception of sovereignty which threatens to spoil the simple purity of this picture.

The attempt to apply principles of personal justice and

the "rights of man" to national states always meets resistance and, I believe, a justified resistance. There are two types of justice in vogue in the world, each of which promises highly unsatisfactory results as applied to inter-state relations. The justice of *legality* naturally tends to perpetuate the *status quo*: a juridical decision would have kept Austria in control of Italy, and these colonies under the control of Britain. The justice of *equity*, however, would not preserve the *status quo*: on the contrary, it would work miracles,—such miracles as none would wish to see performed. It would argue as follows. Britain has an empire; I also should have an empire. Thus Germany has argued, with great plausibility. But let the argument run its course. Let Sweden and Switzerland and Montenegro also have empires; for what is fair for one is fair for another in terms of the "equal rights of states." Or obversely, that which does not work all around is not true anywhere, and we ask Britain to surrender her claims to empire and redistribute the world among all nations in such wise as to give all an equal share in every good thing. The absurdity of these proposals creates a presumption that these two types of justice do not fit the international situation, and that the morality appropriate to persons cannot be translated forthwith into a code for nation states.

I believe, in fact, that the morality of *comparison* based on the presupposition of equality, has a very restricted application to states; and that states are frequently right in refusing to defer to a plea based on this kind of justice. If so, there enters into the notion of their sovereignty an element of self-determination based on the *uniqueness of states*, as opposed to their comparableness. For while human nature that needs the state is the same everywhere, the geographical and other objects that enter into these vital circuits are surprisingly various, crooked, and dissimilar. The entire ordering of life, about which theme the political experiment plays, must be different in the Soudan and in Siberia; in empty America and in crowded Holland; in portless Switzerland, and in sea-girt Britain. The

important thing would be that states should get rid of the supposed necessity of imitating in everything the states they regard as big and prosperous, and find rather the specific conditions for their own peculiar life. They would then speak, not of their "rights," but of their "vital interests"; and they would have grave doubts about the arbitrariness of these interests, precisely because they are—and of right ought to be—unique.

## VII.

In falling again into the language of "right" while rejecting it, we come to the final point of our argument. This third empirical element of sovereignty, the incomparableness and hence apparent non-arguableness of vital interests, is not opposed to the application of moral concepts to states,—it merely demands *another kind* of moral concept. And the hope for the future peace of the world seems to me to lie in recognizing this fact.

We are naturally inclined, at times, to fall back, as does Professor Philip Marshall Brown, in his book on *International Realities*, from the idea of "right" to that of "interest" as applied to states, because of the visible inadequacies above noted. We are inclined to judge, as he judges,—that the security of the people must still be the supreme law; that (as he declares with Lorimer) "no state puts its conscience or judgment in the keeping of any other," inasmuch as there is no competent common superior, no competent public opinion of the world, no extant "family of nations composed of peoples possessing common standards of right and wrong, common conceptions of rights and obligations," no available world court of arbitrators "free from all national and racial prejudices, detached from the atmosphere of world politics, and blessed with transcendent wisdom" such that they should be allowed "to judge the acts of England in Egypt, France in Morocco, Russia in Persia, and the United States in Mexico and Colombia."<sup>2</sup> It is surely better to face these conditions, as Professor

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<sup>2</sup> *International Realities*, pp. 52, etc.

Brown faces them, recognizing the limited application of the ethical factor while demanding for it its due place, than to bring the entire plea for international compunction into disrepute, perpetuating the kind of contempt felt for it in the German high command and elsewhere, by insisting on applying it where only culpable blindness to fact could suppose it capable of being applied.

In view of all this, it is still noteworthy that when Professor Brown quotes Lorimer, he finds himself speaking of a *conscience* which every state holds at least over itself in these matters; and while it is doubtless true that no state dare put its conscience in the keeping of any other one state, any more than any person dare put his conscience in the keeping of any other person, it is still an open question whether any state can prevent its actions, so far as they actually affect the interests of other states, and come increasingly to the knowledge of the world, from being judged by the consciences of *all other states*, or can insulate its own judgment from that outer judgment in proportion as that outer judgment approaches a *free consensus*. The point is, as I see it, that the conscience of the world does not necessarily limit itself to the lines of either legality or equity; that it is *capable of making the valid distinction* between the comparable and the incomparable concerns of different states. This is what we are likely to despair of, but, as I believe, without sufficient ground.

For after all, the third kind of justice we need is no other than the familiar justice of the family, which in giving gifts to children does not feel obliged to make the gift to A identical with the gift to B for equity's sake; or the familiar state of mind of the traveler, who travels only because he finds interest and beauty, not in the similarities, but in the peculiarities of every land. It exists, to some extent, in the mind of everyone who, confronted with the question, Do you wish the annihilation of Germany, or of any other enemy state, answers with a distinct No.

The state of mind required to bring a public conscience into these awkward, non-justiciable, individual problems,

is thus neither unknown nor inaccessible.\* But it is very doubtful whether it yet exists *in sufficient volume* to justify any state in entrusting its interests to the keeping of international conscience.

But this, indeed, is a question of condition, not of theory, and can only be solved by making the test, and running thereby the risk of loss, even of martyrdom. And a martyrdom which might be the evidence of a mistaken faith in this conscience, hence of folly, and indeed of criminal negligence on the part of a government responsible for its people, might conceivably be the opposite of folly and crime, if it were a necessary sacrifice to arouse a slumbering world-conscience into competent action. Some two thousand years ago an obscure Jew ventured to make the supreme wager, in the faith that mankind was sufficiently near a perception of brotherhood, so that his act would be caught up, as it were, by the conscience of mankind, and kept from falling to the ground as an act of madness,—preserved rather as a symbol of divine wisdom. And what this Jew ventured for the conscience of individual men; that, in our day, one small state seems to have ventured for the conscience of the states of the world. The deliberate self-sacrifice of Belgium may well be the test case,—either an act of profound political guilt, or an act big with a powerful future.

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\* Cf. Josef Kohler, *Moderne Rechtsprobleme*, 2d Ed., 1913, §41. "Allein auch hier (speaking of exactly these problems) ist die Möglichkeit nicht ausgeschlossen, dass sich allmählich gewisse Grundsätze der Ausgleichung entwickeln, und dass die Lösung solcher völkerschaftlichen Probleme von den Nationen leidenschaftslos übernommen wird. Heutzutage ist nur das eine wesentlich, dieses Problem scharf ins Auge zu fassen, und unter Berücksichtigung der geschichtlichen Erfahrung, über die Grundsätze solcher Ausgleichung nachzusinnen: tun wir dies, dann wird der Gedanke uns nie verlassen, dass der Friedensengel einst auch hier erscheinen wird."